Crime Bills That Passed During the 2006 Regular Session

ALABAMA SENTENCING COMMISSION BILLS

Act # 2006-312

Sentencing Standards Effective October 1, 2006

This Act adopts voluntary sentencing standards with appropriate work sheets for 26 felony offenses. These recommended sentences provide judges with additional information and direction in lieu of the wider ranges currently available under existing statutory law.

The recommendations, or "sentencing standards" as they are called, are voluntary, non-appealable, historically based, time imposed, sentencing recommendations developed for 26 felony offenses, representing 87% of all felony convictions and sentences imposed in Alabama over an approximate five-year period from October 1, 1998 through May 31, 2003. The standards are recommended sentence ranges and dispositions for the covered offenses, developed utilizing key factors normally considered by judges in imposing sentences.

The Commission believes that judges will follow the sentencing recommendations in about 75% of sentenced cases. The standards represent the "normal" case containing recognized sentencing factors. Of course, other factors will undoubtedly exist in about 25% of sentenced cases, in which judges are expected to take those additional factors into consideration and impose either a harsher or more lenient sentence than recommended. Preliminary testing of the standards has indicated that use of the standards will produce the desired result, i.e., greater uniformity in sentencing and the elimination of unwarranted sentencing disparity.

This legislation is virtually the same as the sentencing standards bill that was introduced during the 2004 and 2005 Regular Sessions that passed the House both years, and was in a position to pass on the last night of the 2005 Regular Session. Some minor changes have been made to the bill, including a new implementation date for the sentencing standards and some minor improvements in the standards themselves to clarify definitions and recommendations. In addition, a provision was added to require filing of the standards with the Clerks of the Senate and House, as well as the Clerk of the Alabama Supreme Court.

Act # 2006-297

Theft of Property 2nd Effective April 4, 2006

This Act corrects a mistake made in 2004, when the threshold for Theft of Property 2nd Degree was inadvertently changed back to the pre-2003 level in a bill changing the words "horses" and "mules" to "equine" and "equidae." The pre-2003 statutory language was used in making the amendment. This change resulted in an omission for theft of property valued from \$1,000 to \$2,500.

2006-198 Burglary 1st and 2nd Effective June 1, 2006

This Act amends §§ 13A-7-5 and 13A-7-6 of the *Code of Alabama 1975*, relating to Burglary in the 1st and 2nd degrees, requiring that an offender either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to be convicted of the higher offense. It is specifically provided that, if the deadly weapon or dangerous instrument is one of the items stolen in the burglary, the crime does *not* involve the "use" or "threatened use" of the deadly weapon or dangerous instrument.

2006-197 Maximum Fine Increase Effective June 1, 2006

The fines authorized for criminal offenses have not been adjusted since the Criminal Code was originally codified back in the 1970's. This Act amends §§ 13A-5-11 and 13A-5-12 of the *Code of Alabama 1975*, to increase (based on the inflation index) the maximum amount of fines authorized to be assessed upon one convicted of a felony, misdemeanor, or state law violation. If passed, the amendments would allow the judge to retain his/her discretion to impose any lesser fine amount and would simply authorize the imposition of a larger fine in appropriate cases.

The new maximum authorized fines are comparable to those authorized in Tennessee, Georgia, and Virginia as well as to the fines imposed for new offenses in Florida, Mississippi, and South Carolina.

2006-218 Pre-/ Post-Sentence Investigation Reports Effective March 10, 2006

Under prior law, pre-sentence investigation reports on convicted felony offenders were required only upon motion of a party or the court and these reports are provided in written or electronic form. These reports contain information essential to the supervision of probationers and the classification of prison-bound offenders. The reports also contain vital information for maintaining current data on convicted offenders on which policy decisions can be made for improving Alabama's criminal justice system. This Act requires either the filing of *post-sentence or* pre-sentence reports, to avoid case processing delays, and also requires such reports to be completed in electronic format.

2006-298 DUI Repealed by Act 2006-654 **2006-654 Effective 4/28/06 HB** 117 **Black**, M.

The appellate courts had interpreted Alabama's DUI statute as prohibiting the use of prior DUI convictions from out-of-state for the purpose of enhancing punishment when a person was subsequently convicted for violating Alabama's DUI statute. Act 2006-654 amended Alabama's DUI statute to specifically authorize the use of out-of-state convictions for enhancements under § 32-5A-191, Alabama's DUI Law. As substituted, HB 117 included a provision under new subsection (o) referencing prior convictions occurring within a 5 year period for enhanced punishment. It reads, in its entirety, as follows: "(o) A prior conviction within a five-year period for driving under the influence of alcohol or drugs from this state, a municipality within this state, or another state or territory or a municipality of another state or territory shall be considered by a court for imposing a sentence pursuant to this section." Subsection (f) still limits the use of a prior conviction to those occurring within a five year period, however, subsection (g) relating to third convictions and subsection (h) relating to fourth or subsequent convictions, have no limitation period specified therein. Whether this imposes a five year limitation on the use of all prior convictions will be an issue which will ultimately have to be decided by the courts. In addition, to correct drafting errors in 2006-298 omitting reference to commercial motor vehicles, Act 2006-654, specifically repealed Act 2006-298.

Other Crime Bills

Crime; Chemical Endangerment; Exposure; Children Act 2006-204 SB 133, Barron, Effective: June 1, 2006

Creates the new crimes of Chemical Endangerment of Child, punishable as follows:

Knowingly, recklessly or intentionally causing or permitting a child to be exposed to, ingest or inhale or have contact with a controlled substance, chemical substance or drug paraphernalia as defined – Class C Felony

Exposure which results in serious physical injury – Class B Felony

Exposure that results in the death of the child – Class A felony

The punishment provided in this Act controls unless other provision of law provides a greater penalty or longer term of imprisonment.

Obscene Material & Minors

Act 2006-112

SB 118 Dixon Effective: June 1, 2006

Provides that each depiction (visual depiction is defined as portrayal, representation, illustration, image, likeness or other thing that creates a sensory impression, whether an original duplicate or reproduction) of an individual less than 17 years of age would constitute a separate offense for each single visual for convictions of child pornography pursuant to §§13A-12-191, 192, 196 or 197. In addition, each depiction of any individual under 17 shall be a separate offense for knowingly filming, printing, recording, photography or producing visual depictions of children under 17 years of age in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct.

Identity Theft; Increase Penalties

Act 2006-148

SB 68 Poole Effective: April 5, 2006

Amends §13A-9-102 to eliminate limitation that identity theft must result in a financial loss of greater than \$500 and all references to prior convictions and designation of identity theft in the first degree. Identity theft remains classified as a Class C felony. In addition, a provision is included establishing a seven year statute of limitation and provides and exception for obtaining the identity of another for the sole purpose of obtaining alcoholic beverages, tobacco, or another privilege denied to minors.

1st Circuit DA Pre-Trial Diversion Program Act 2006-595 SB 536 Lindsey Effective April 26, 2006

Authorizes the District Attorney of the 1st (Choctaw, Clarke, and Washington Counties) Judicial Circuit to establish a pretrial diversion program and assess unlimited fees for program participation. There is authority for waiver of the fees based on indigency, as determined by the District Attorney. Those eligible to apply for admission to the program are offenders charged with traffic offenses, property offenses, offenses not involving serious physical injury to the victim or victims under 14 years of age, misdemeanors and violations. Excluded are offenses of drug trafficking or distribution of drugs, child abuse, elderly abuse, sex offenses, Class A felonies, offenses involving serious injury or death. The Act includes a specific provision which makes all of the district attorney's pretrial diversion program records confidential. For those that successfully complete the program, charges against the offender are disposed in a noncriminal manner. Where a guilty plea is entered as a prerequisite for admission to the pretrial diversion program, the appropriate circuit or district judge must review and grant

his approval or disapproval. An express provision is included granting the district attorney absolute immunity, criminal or civil, for the conduct of any offender while participating in the pretrial diversion program

SB 564 Sanders

4th Circuit DA Pre-Trial Diversion Program

Effective April 14, 2006

This bill is similar to the pretrial diversion bills passed for the 19th and 1st Judicial Circuits, except there is a provision providing that the circuit clerks of Dallas, Bibb, Perry, Wilcox and Hale Counties shall collect the fees assessed for the DA and are entitled to \$25 of the fee of each applicant. Twenty Five dollars of each fee also is earmarked for the county. This bill also requires that the opinion of the law enforcement officers involved in the offense be sought and used in the decision for admission to the program. The Fees assessed for the program are as follows:

Felony Offenses – Up to \$750 Non Traffic Misdemeanor Offenses – Up to \$500 Traffic offenses – Up to \$300

19th Circuit; Pretrial Diversion Program HB 192 Gipson Effective: February 22, 2006

Authorizes the District Attorney of the 19th Judicial Circuit to establish a pretrial diversion program and assess unlimited fees for program participation. There is authority for waiver of the fees based on indigency, as determined by the District Attorney. Those eligible to apply for admission to the program are offenders charged with traffic offenses, property offenses, offenses not involving serious physical injury to the victim or victims under 14 years of age, misdemeanors and violations. Excluded are offenses of drug trafficking or distribution of drugs, child abuse, elderly abuse, sex offenses, Class A felonies, offenses involving serious injury or death. The Act includes a specific provision which makes all of the district attorney's pretrial diversion program records confidential. For those that successfully complete the program, charges against the offender are disposed in a noncriminal manner. Where a guilty plea is entered as a prerequisite for admission to the pretrial diversion program, the appropriate circuit or district judge must review and grant his approval or disapproval. An express provision is included granting the district attorney absolute immunity, criminal or civil, for the conduct of any offender while participating in the pretrial diversion program.

21st Circuit; Pretrial Diversion Program Act 2006-222 & Act 2006-202 HB 375 Hammett Effective: June 1, 2006 SB 77 Lindsey

Authorizes the district attorney of the 21st Judicial Circuit to establish a Pretrial Diversion program and assess a fee of not more than \$1,000 for participation. Although there are provisions stating that offenders charged with certain offenses are not generally eligible to participate in the program, i.e., traffic offenses, conservation offenses, offenses involving serious injury or death, etc. the district attorney can waive any of the

Act 2006-89

prohibitions. There is no provision detailing the disposition of the case upon completion of the program and no provision regarding the expungement or confidentiality of records.

Crime, Justifiable Use of Deadly Force Act 2006-303 SB 283 Means Effective June 1, 2006

Authorizes the use of deadly force against a person who is in the process of forcefully entering, or who has unlawfully and forcefully entered a dwelling, residence, occupied vehicle, or federally licensed nuclear power facility or is attempting to remove or has forcefully removed a person against his will from same. There are exceptions to grant of authority, i.e. when action is use of force is unlawful; where the person is a lawful resident, owner or lessee and there is no existing domestic violence injunction; the person sought to be removed is a child or grandchild or is otherwise in lawful custody or under guardianship of person seeking removal, law enforcement officers., etc..

SB 83 Combined Jail Facilities Act 2006-185 Effective June 1, 2006 Waggoner

Authorizes two or more municipalities to establish a regional jail authority and operate regional jail facilities.

SB 128 Passing School/Church Bus – New Penalties Act 2006-311 Little T **Effective 10/1/06**

Increases penalties for illegally passing a school or church bus and makes 4th or subsequent conviction a Class C felony, punishable by imprisonment and \$1,000 to \$3,000 and one year revocation of driver's license. Punishment is provided as follows for 1st, 2nd and 3rd violations: 1st conviction Fine

Fine \$150 - 300

2nd conviction \$300 – 500 fine, 100 hours of community service and 30 Fine

day suspension of driver's license.

3rd conviction \$500-1,000, 200 hours community service and 90 day

driver's license suspension.

It is specifically provided that there are no lesser included offenses for these violations, the HFOA does not apply for fourth and subsequent convictions and that all fines are to be sent to the State General Fund and earmarked for the agency that enforces the law.

Crime; **Obstructing Volunteer Firemen**

HB 247 Schmitz Acts 2006-423 Effective July 1, 2006 This bill amends §13A-10-1 to include members of volunteer fire departments within the definition of "fireman" thereby apply the crime of Obstructing Governmental Operations under §13A-10-2, a Class A misdemeanor, to actions taken against of volunteer firemen.

Crime: Homicide "Person" Include Unborn Child – The Brody Act HB 19 Collier Act 2006-419

Effective July 1, 2006

Amends § 13A-6-1 to define person as related to criminal homicides or assaults to include an unborn child at every stage of gestation, regardless of viability.

Crime; Murder If Firefighter Dies; Arson Act 2006-427 HB 413 McLaughlin Effective July 1, 2006

Amends §13A-6-2 relating to the crime of murder (Class A felony) to include the death of a "qualified governmental or volunteer firefighter or other public safety officer" who dies while performing his or her duty as a consequence of the crime of arson.

Crime, Hog and Canine Fighting

Act 2006-353

HB 86, Jackson

Effective July 1, 2006

Creates the crime of hog and canine fighting and provides that it shall be unlawful to organize or conduct any commercial or private event which displays the fighting between one or more domestic or feral canines and feral or domestic hogs. First offenders are punished as a Class A misdemeanor, Second and subsequent convictions are punished as a Class C felon. The Act requires a judge to inform a defendant of the enhanced penalty for subsequent convictions after a first violation.

Terrorist Act; Endanger Food & Water Supplies Act 2006-508
SB 308 Bedford Effective July 1, 2006

Creates the crime of endangering the food or water supply, A Class B felony.

Child Restraints, Criteria/Fine Act 2006-623
SB 38 Ross Effective July 1, 2006

Requires child passenger restraints for children, specifically mandating the use of booster seats for children under 8 years of age unless the child weighs 65 pounds or more or is four feet nine inches in height or taller. Each violation will result in a \$25 fine that the court can dismiss upon proof of acquisition of an appropriate child passenger restraint. A specific provision is included requiring state, county and municipal police departments to maintain statistical information on traffic stops of minorities pursuant to this bill and to report that information monthly to the Office of the Attorney General and the Department of Public Safety.

Crime, Sex Offenders: Victim Under 12 years of Age HB 541 Gaither Act 2006-575 Effective July 1, 2006

Creates the crime of sexual abuse of a child less than 12 years old, punishable as a Class B felony. This offense is now made a more severe offense than sexual abuse in the first degree, Class C felony.

Backing of Arrest Warrants for Execution in Other Counties Act 2006-547 HB 145 Johnson Effective July 1, 2006

Eliminates the requirement that arrest warrants to be executed in another county must be "backed" by local magistrate or judge. Appears to require assistance of local law enforcement by the following provision: "The law enforcement officer shall summon the assistance of local law enforcement if possible to assist in making the arrest and only then may exercise the same authority as the officer possesses in his or her own county or jurisdiction."

Crime: Child Abuse: Enhance Punishment Act 2006-531

HB 47 DeMarco Effective July 1, 2006

Designates the crime of child abuse pursuant to §26-15-3 as a Class C felony. Under existing law it is unclassified and provides for punishment in the penitentiary for not less than one year, rather than one year and a day, up to 10 years. This change will authorize application of the Habitual Felony Offender statute for repeat offenders.

Crime: Home Repair Fraud

Act 2006-580

HB 160 McMillian

Effective July 1, 2006

This bill creates the crime of home repair fraud and provides that the first violation is a Class A misdemeanor and second or subsequent convictions are punishable as Class C felony offenses. Restitution is required to be ordered by the judge as a condition of probation, either within a specified period of time or in specified installments. It is specifically provided that "[t]he order shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay the amounts ordered at the time of sentencing. Intentional refusal to make restitution pursuant to a court order may be considered as grounds for revocation of the person's probation or suspension of sentence."

Assault; Healthcare Workers

HB 390 Boyd

Act 2006-565

Effective July 1, 2006

Amends §13A-6-21 relating to the crime of assault in the second degree, a Class C felony offense, to include the assault of a health care worker or other person employed by or

practicing at certain health care facilities which results in physical injury. Home health care workers that are working in private residences are expressly excluded, as are assaults by patients who are impaired by medication.

Pardon of Persons – Rosa Parks Act Act 2006-544 HB 592 McClammy Effective July 1, 2006

This bill would provide a pardon to a person convicted of a state law or municipal ordinance the purpose of which was to maintain racial separation or racial discrimination. It requires that a pardon be granted within 42 days from submission of the application unless it is objected to by the state. A separate procedure is authorized for applying for a pardon by filing a sworn affidavit. In instances where the person to be pardoned is dead, the bill provides that an application may be filed by his or her relatives or any interested party. A specific provision for expungement of records of conviction is included for those granted a pardon. An expungement form is to be provided by the Administrative Office of Courts.

HB 348 Dunn Eliminate Juveniles, Demand Reduction Assessment Act 2006-560 Effective April 25, 2006

Amends §13A-12-281 to delete juvenile delinquents from the additional penalty required to be assessed for drug offenses. First offenders must now be assessed an additional penalty of \$1,000; \$2,000 for second and subsequent offenses

HB 125 Discharge Firearm/School Bus or building Act 2006-539 Lindsey Effective July 1, 2006

Creates the new crimes, discharging a firearm into an occupied school bus or school building (Class B felony) and discharging a firearm into an unoccupied school bus or school building (Class C felony). A specific provision is included providing that if any other law prescribes the same conduct that the law carrying the more serious penalty will be applied.

HB 661 Crime: Disrupt Funeral/Funeral Procession Act 2006-585 Letson Effective July 1, 2006

Creates the crime of disrupting a funeral or a memorial service and provides that the first offense shall be a Class A misdemeanor and a second or subsequent conviction will be punished as a Class C felony.

HB 73, Baker, Act 2006-533 Effective April 21, 2006

But does not apply to Juvenile in detention on the effective date

Municipality Responsible for Expense of Juvenile in Detention

Applies to juveniles charged and/or detained for violation of a municipal ordinance that is NOT based on state criminal statute adopted by the city as a municipal ordinance violation. In these limited situations, the municipality is required to reimburse the county for actual costs of housing, maintenance and medical expenses of those juveniles held in a facility utilized by the county for housing juveniles.

HB 371 Boothe Act 2006-561 Theft of Property 1st Degree – Expand Definition Effective July 1, 2006

Amends the TOP 1st statute (Class B felony) to include theft of property (the cumulative value within 180 day period, valued not less than \$1000) resulting from a common plan or scheme by one or more persons where the object of the plan or scheme is to sell or transfer the property to another person or business who knows that the property is stolen. It is provided that prosecution can be in either county where the theft occurred or where the property was disposed.

HB 824, Black, M. Commercial Driver License Not Eligible Diversion Program Effective July 1, 2006

Specifically prohibits deferred prosecution or participation in a diversion program for any commercial driver who is charged with a traffic violation.

HB 37, Grimes Person Charged/Rape Tested for HIV & STDs Act 2006-572 Effective July 1, 2006

Allows an alleged victim of rape, sodomy, or sexual misconduct to request that the defendant be tested for sexually transmitted diseases. The test is initiated by the district attorney filing a motion with the court. An order is then issued requiring the person charged to submit to a test. The Act provides that upon the filing of a motion "the court shall order the person charged to submit to testing if there is probable cause to believe that the person charged committed the crime of rape, sodomy, or sexual misconduct and the transmission of body fluids was involved."

In the event the test result is negative, the Act provides that "the court shall order the person to submit to any follow-up tests at the intervals and in the manner as shall be determined by the State Board of Health. If the test result is positive, the defendant is to receive post-test counseling and, at the request of the alleged victim or his/her parent or guardian, support services and appropriate health care, and testing shall be provided to the victim. The test results are confidential and are only to be provided to the alleged victim, parent or guardian of the alleged victim, the attending physician of the alleged victim, and the person tested. A violation of the confidentiality provisions is a Class C misdemeanor.